LEE KUAN YEW

v.

C.V DEVAN NAIR

HIGH COURT, SINGAPORE
WEE CHONG JIN CJ
[SUIT NO. 1042 OF 1988]
3 SEPTEMBER 1990

TORT: *Defamation - Defence of fair comment and justification.*

The plaintiff is currently the Prime Minister of Singapore whilst the defendant was the former President of Singapore. In his statement of claim, the plaintiff claimed that the defendant had defamed him. The plaintiff alleged that the defendant had uttered words which implied that the plaintiff had collaborated and colluded with foreign powers in their plans to interfere in Malaysia's internal affairs, thereby subverting the independence, integrity and sovereignity of Malaysia.

In his defence, the defendant alleged that the words were taken out of context; he denied that these words bear, or were capable of bearing, the meanings alleged by the defendant. The defendant also raised the defence of fair comment and justification.

On 7 April 1988, the Registrar ordered the defendant to provide further and better particulars. It is against this order that the defendant appealed to this Court.

There are two main issues which require the Court's decision:

(i) the first issue is whether particulars (viii) relied in support of the plea of fair comment is relevant to the issues in the pleading;

(ii) the second issue is whether particulars (viii) relied upon in support of the plea of justification justifies or is capable of justifying the meaning ascribed by the defendant to the alleged defamatory words.

Held:

[1] The defendant must confine the particulars of the facts relevant to the issues on the pleadings. The particulars mentioned by the defendant do not go to the issues at all. They cannot conceivably have any bearing on the alleged libel at all. To allow particulars (viii) to stand would be to allow at the trial wide-ranging evidence and discussion on a topic which has no connection whatsoever with the alleged libel and would embarrass the fair trial of the action.

[2] It is well established that where the defence of justification is pleaded, the defendant is required to spell out the meaning of the words which, if it is their true meaning, he will seek to justify. In the Court's judgment, particulars (viii) are irrelevant to the issues on the pleadings and must be struck out.

[Defendant's appeal dismissed.]

Cases referred to:

Kemsley v. Foot [1952] AC 345
S & K Holdings Ltd. v. Throgmorton Publications Ltd. [1972] 3 All ER 497
Polly Peck (Holdings) plc v. Trelford [1986] 2 All ER 84
Waters v. Sunday Pictorial Newspapers Ltd. [1961] 2 All ER 758

Legislation referred to:
Rules of Supreme Court 1970 [Sing], O. 18 r. 19

JUDGMENT

Wee Chong Jin CJ:

This is a libel action brought by the plaintiff against the defendant. The defendant pleaded *inter alia*, the defences of fair comment and justification and gave particulars common to both pleas. By Order of Court dated 1 November 1988, further and better particulars were ordered. By Order of Court dated 7 April 1989, the registrar ordered that particulars (viii) under para. 10 of the defence and the particulars (viii) of the further and better particulars filed on 25 November 1988 (*vide* Order of Court dated 1 November 1988) be struck out under O. 18 r. 19 of the Rules of Supreme Court 1970, and alternatively under the inherent jurisdiction of the Court. An appeal was brought to this Court; and I dismissed the appeal. I now give my reasons.

The plaintiff is the Prime Minister of Singapore since 1959 and was a member of the Malaysian Parliament from 1963 to 1965. The defendant was the President of Singapore from October 1981 to March 1985. By the original statement of claim (since amended on 17 April 1989), the plaintiff alleged that on two separate occasions, the defendant made statements defamatory of him.

In para. 3 of the statement of claim, the plaintiff alleged that on or about 22 May 1988, in the course of the BBC 24 hours programme, the defendant falsely and maliciously spoke and published and caused to be broadcast and published on radio within Singapore of and concerning him the following words defamatory of him:

> He (meaning Mr. Francis Seow) did not do anything which Lee Kuan Yew and I had done with greater distinction when we were sitting on the opposition benches of the Malaysian Parliament.

In para. 4 the plaintiff alleged that these words "in their natural and ordinary meaning in the context of the said radio broadcast meant and were understood to mean that the plaintiff had collaborated and colluded with foreign powers in their plans to interfere in Malaysia's internal affairs thereby subverting the independence, integrity and sovereignty of Malaysia and, in the premises, that the plaintiff was guilty of such misconduct when he was a member of the Malaysian Parliament as would have justified his immediate arrest and detention."

In para. 5, the plaintiff alleged that on or about 22 May 1988, the defendant falsely and maliciously wrote and published or caused to be written and published in a press statement issued by or on behalf of the defendant of and concerning him and of and concerning him as a member of the Malaysian Parliament contained the following words defamatory of him:

> Other versions of the history of Singapore's brief experience as part of Malaysia tell a different story. One of them is that of Tunku Abdul Rahman, Malaysia's first Prime Minister, who told me not long ago, that he had all the facts at his disposal to warrant the arrest of Mr Lee when he was the most vociferous member of the Malaysian Opposition.
>
> ...
>
> In courting and sedulously cultivating a whole variety of foreign establishment and opposition circles, we did no more that what Mr Seow is supposed to have done in his meetings with US State Department Officials, who turned out to be rather small fry. Mr Lee courted far more powerful figures in the countries concerned.

In para. 6 the plaintiff alleged that these words "in their natural and ordinary meaning meant and were understood to mean that the plaintiff had collaborated and colluded with foreign powers in their plans to interfere in Malaysia's internal affairs thereby subverting the independence, integrity and sovereignty of Malaysia and, in the premises, that the plaintiff was guilty of such misconduct when he was a member of the Malaysian Parliament as would have justified his immediate arrest and detention."

In his defence, the defendant alleged that the words were taken out of context; and denied that the words bear, or were capable of bearing, the meanings alleged by the plaintiff. Paragraph 5 sets out the defence of fair comment to the words in para. 4 of the statement of claim in these terms:

> The said words were fair comment upon a matter of public interest, namely upon the sufficiency of the grounds for the arrest and detention of Mr Francis Seow and upon the contents of a statutory declaration made by Mr Seow while in custody which was published and commented on by the Government which the plaintiff leads and upon the attitudes and conduct of the plaintiff and his Government towards those who seek to challenge their power and their policies.

Under particulars, the defendant rely upon the particulars to para. 10 of the defence.

Paragraph 10 sets out the defence of fair comment to the words in para. 5 of the statement of claim as follows:

> The words set out in para. 5 of the statement of claim, were, in their context, a fair comment upon matters of public interest, namely upon the sufficiency of the grounds proclaimed by the plaintiff and his Government for the arrest and detention of Mr. Francis Seow, and upon the plaintiff's attempt publicly to justify such detention and to reject comparisons made by the defendant between his own and the plaintiff's contacts with representatives of foreign Governments while opposition members of the Malaysian Parliament, and upon the consequences for democracy in Singapore of the plaintiff's conduct of Government.

It then sets out the particulars which number 12 in all. Particulars (viii), which is at the heart of this appeal, is in these terms:

> (viii) The plaintiff has approved the detention of political dissidents at Whitley Road detention centre in order to extract statutory declarations from them by psychological pressure.

Paragraph 12 of the defence contains the defence of justification and repeats the particulars to para. 10 of the defence, including particulars (viii).

In the further and better particulars dated 25 November 1988, pursuant to Order of Court dated 1 November 1988, the defendant sets out the following further and better particulars:

> *Under paragraph 10, particulars (viii)*
>
> (a) Identifying the political dissidents detained at Whitley Road Detention Centre;
>
> (b) Stating which of the said dissidents have made statutory declarations;
>
> (c) Stating the "psychological pressure" alleged to have been applied to the said dissidents.
>
> (a) The following persons *inter alia* were detained:
>
> Mr Seow
>
> Patrick Seong
>
> Teo Soh Lung

Tang Lay Lee

Kevin de Souza

Ng Bee Leng

Chung Suan Tze Wong Souk Yee

William Yap Hon Ngian

Kenneth Tsang

Vincent Cheng Tan Fong Har

(b) The following persons *inter alia* made statutory/declarations or the other statements:

Mr Seow

Patrick Seong

Tang Lay Lee

Ng Bee Leng

Tang Fong Har

(c) The said dissidents were subjected to one or more of the following psychological pressures:

i) Deprivation of sleep

ii) Enforced standing

iii) Excessively cold airconditioning without proper clothing

iv) Excessively lengthy interrogations

v) Deprivation of or undue restrictions on communications with family, friends and/or advisers

vi) Physical assault

By Order of Court dated 7 April 1989, the registrar ordered that particulars (viii) and the further and better particulars given under para. 10(viii) to be struck out. It is against this order that the defendant appeals to this Court.

Before turning to the essential issues in this appeal, it is useful to set out a number of uncontroversial propositions of law which are unchallenged in this appeal. First, "a defendant who has made a defamatory comment on a matter of public importance must be entitled to adduce any relevant evidence to show that the comment was fair and in order to do so must be entitled to allege and attempt to prove facts which he contends justify the comment": per Lord Oaksey in *Kemsley v. Foot* [1952] AC 345, 361. Secondly, where the parts of an article are not clearly severable and the sting lies in the totality of its allegations, it is not open to a plaintiff to select the defamatory statements of which he complained, he must take the whole publication as it is. In cases where the trial Judge is entitled to see the whole article, the defendant is entitled to plead justification or fair comment as to the whole and to give particulars of those pleas in respect of the whole: see *S & K Holdings Ltd. v. Throgmorton Publications Ltd.* [1972] 3 All ER 497 and *Polly Peck (Holdings) Plc v. Trelford* [1986] 2 All ER 84. Thirdly, the drastic remedy of striking out a pleading, or a part thereof, cannot be resorted to unless it is plain and obvious that the pleading objected to disclose no arguable case: per Willmer LJ in *Waters v. Sunday Pictorial Newspapers Ltd.* [1961] 2 All ER 758, 761.

Despite the mass of authorities and *dicta* in this field, the issues which arose for necessary decision in this appeal can be shortly stated. The first is whether particulars (viii) relied upon in support of the plea of fair comment is relevant to the issues on the pleadings. The second is whether particulars (viii) relied upon in support of the plea of justification, justifies or is capable of justifying the meaning ascribed by the defendant to the alleged defamatory words.

The First Issue

Counsel for the defendant submitted that particulars (viii) is relevant to the defence of fair comment in paras. 5 and 10. It was submitted that the reason(s) for the detention of the dissidents and the conditions under which some of them made statutory declarations are clearly capable of forming the material basis upon which the comments are made.

I cannot accede to the submission. The defendant in giving particulars of the facts on which he relies in support of his plea of fair comment, must clearly confine such particulars to those relevant to the issues on the pleadings. Particulars (viii), however, do not go to the issues at all. The thrust of the particulars is the alleged "approval" of the plaintiff for the detention of the dissidents to extract statutory declarations through psychological pressures. In the further and better particulars, the defendant sets out a list of the names of the dissidents who were detained and who gave statutory declarations and the types of psychological pressures. The sting of the alleged libel lies in the allegation concerning the plaintiff's conduct in relation to foreign powers when he was member of the Malaysian Parliament in 1963-1965. It is thus plain that the particulars cannot conceivably have any bearing on the alleged libel at all. If, however, the use of the Internal Security Act is a relevant matter, then particulars (ix) more than amply covers the matter in these terms:

> (ix) Under the Internal Security Act in force in Malaysia in 1965, as under the Internal Security Act in force in Singapore today, the Government can approve the detention of any person whose liberty it perceives as threatening to the security of the state. The determination of the security grounds warranting the detention of any person (including political opponents) is not subject to appeal, or to any judicial review on other than procedural grounds. The legislation is drafted so widely that any critic of the Government, however upstanding and conscientious, may lawfully be detained.

To allow particulars (viii) to stand, would be to allow at the trial wide-ranging evidence and discussion on the topic of the plaintiff's alleged approval which has no connection whatever with the alleged libel and would embarrass the fair trial of the action.

The Second Issue

Counsel for the defendant submitted that the particulars (viii) is relevant to a possible interpretation of the words alleged to be defamatory. This submission is, in my judgment, wholly mistaken. It is well established that where the defence of justification is pleaded, the defendant is required to spell out the meaning of the words which, if it is their true meaning, he will seek to justify. It will be observed from the further and better particulars given under para. 12 that the defendant denied that the words bore or were understood to bear the meaning alleged by the plaintiff; and set out the meaning which the defendant will justify as follows:

> The said words bore and were understood to bear the meaning which appears on the face thereof, namely that the plaintiff when a member of the Malaysian Parliament, so conducted himself as to cultivate goodwill and support for the PAP and the aim of a "Malaysian Malaysia" from establishment and opposition spokes people in Britain, Australia and New Zealand, and that in 1965 the Malaysian authorities seriously considered detaining the plaintiff.

It clearly follows that the issue on the pleadings is whether the alleged defamatory words are capable of having the meaning which the defendant contends. That alleged meaning relates essentially to the plaintiff's conduct in cultivating the goodwill and support for the PAP and the aim of a "Malaysian Malaysia" from Britain, Australia and New Zealand and the alleged fact that in 1965 the Malaysian authorities seriously considered detaining the plaintiff. It can be seen that this alleged meaning is totally unrelated to the averment in particulars (viii) that the plaintiff gave "approval" for the detention of dissidents to exact statutory declarations through psychological pressures. It follows, in my judgment, that particulars (viii) is irrelevant to the issues on the pleadings and must be struck out.

Finally, Counsel for the defendant, in his request for further arguments, made the submission that the particulars (viii) could be amended to read as follows:

> The plaintiff has publicly expressed his support for the decision to detain political dissidents at Whitley Road detention centre, and has made expressions of support in the knowledge and/or with reason to suspect that the purpose of their detention was, *inter alia*, to obtain statutory declarations from them by use of psychological pressure.

As can be clearly seen, despite the proposed amendment, the thrust of particulars (viii) remains the same; and it was not made relevant by the redrafting. More importantly, it was incapable of cure by amendment, since the averment in the particular is one which could not conceivably bear any relation to the issues on the pleadings. Accordingly, leave to amend was not granted.

For these reasons I dismissed the appeal with costs.

Also found at [1990] 2 CLJ 877